



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0952]

RIN 1625-AA09

Drawbridge Operation Regulation; Victoria Barge Canal,
Bloomington, TX

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the method of operation for the Victoria Barge Canal Railroad Bridge across the Victoria Barge Canal, mile 29.4, at Bloomington, Victoria County, Texas. The bridge owner, the Victoria County Navigation District, in conjunction with the Union Pacific Railroad (UPRR), the operator of the bridge, is operating the bridge remotely under a temporary deviation. This interim rule codifies the change in method of operation while allowing for comments regarding the remote operations. This interim rule increases the efficiency of operations allowing for the safe navigation of vessels

through the bridge while recognizing the bridge's importance to the Port of Victoria that it serves.

DATES: This interim rule is effective [Insert date of publication in the FEDERAL REGISTER].

Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number, using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: (202) 493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Geri Robinson; Bridge Administration

Branch, Eighth Coast Guard District; telephone 504-671-2128, e-mail geri.a.robinson@uscg.mil If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
USCG	United States Coast Guard
NEPA	National Environmental Policy Act
NPRM	Notice of Proposed Rule Making
§	Section Symbol
U.S.C.	United States Code
JOC	Joint Outfall Canal

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2014-0952), indicate the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0952) in the "SEARCH" box and click "SEARCH." Then click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2014-0952) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the docket using one of the four methods specified under ADDRESSES. Please explain why one would

be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

On December 30, 2014, we published a temporary deviation from regulations; request for comments (TD) entitled, "Drawbridge Operation Regulation; Victoria Barge Canal, Bloomington, Texas" in the Federal Register (79 FR 78304). We received no comments on the temporary deviation. No public meeting was requested, and none was held.

The Coast Guard is issuing this interim final rule without prior notice pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C.) 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. This bridge has been operating on a modified schedule under a temporary deviation, and given that we have received no comments, we believe that the schedule has been working. Reverting to the old schedule in order to accept comment would present logistical

difficulties for the operator and users.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. Under the Temporary Deviation published on December 30, 2014, this bridge has been remotely operated, and mariners will benefit from there not being any changes to the ongoing method of operation of the bridge that has been in place for the past six months.

C. Basis and Purpose

The Coast Guard received a request from the bridge owner, the Victoria County Navigation District, in conjunction with the bridge operator, the Union Pacific Railroad (UPRR) to remotely operate the vertical lift span bridge across the Victoria Barge Canal, at Mile 29.4 near Bloomington, Texas. The bridge owner and operator requested to operate the bridge remotely from its dispatching center in Spring, Texas and remove the requirement that a bridge tender be present on site at all times. A temporary deviation was issued permitting these practices. Under the procedures now in use, the bridge will continue to open on signal for the passage of vessels.

This final rule will allow the bridge operator to increase efficiency of bridge operations and vessel transit by remotely operating the bridge. This method provides for the opening signal to be received by the railroad dispatcher and allows the

dispatcher to open the bridge from a remote location. Vessel traffic on the waterway will be monitored by the railroad dispatcher by use of an Automatic Identification System (AIS). The AIS System allows the Port of Victoria and the UPRR dispatcher to determine where vessels are located along the waterway in the vicinity of the bridge. We also note that the Victoria County Navigation District has a carriage requirement that all vessels desiring to transit the Victoria Barge Canal to the Port of Victoria be equipped with an operating AIS transponder.

The Victoria Barge Canal Railroad Bridge is a vertical lift span bridge across the Victoria Barge Canal, at Mile 29.4 near Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position. Traffic on this waterway is primarily commercial and consists of vessels and tows that provide services to the Port of Victoria.

D. Discussion of Comments, Changes and the Interim Rule

No comments were received during the comment period of the temporary deviation. However, a contractor raised an issue regarding the requirements of dispatchers to contact the vessels when a vessel entered the two-mile bridge zone. In response to

this concern, the Coast Guard decided that further comments would be accepted under an Interim Rule.

The bridge owner, the Victoria County Navigation District, in conjunction with the Union Pacific Railroad (UPRR), the operator of the bridge, requested permission to remotely operate the bridge. A test deviation was performed to test the proposed remote operating system as the method for opening the bridge under the existing operating schedule and to determine whether a permanent change to remote operations should be approved.

Prior to the granting of the temporary deviation, the bridge opened on signal for the passage of vessels in accordance with 33 CFR 117.5. When a request signal to open the bridge is received and before opening the bridge for vessel traffic, the tender was required by his company to contact the railroad dispatcher so that railroad traffic could be stopped. Under the existing deviation, the bridge continues to open on signal for the passage of vessels, but the method of opening the bridge is accomplished through remote operation by the railroad dispatcher.

The bridge operator, UPRR, determined that by remotely operating the bridge, vessel transit through the bridge is more efficient. This remote method of operation provides for the

signal to open to be received directly by the railroad dispatcher and will allow the railroad dispatcher to then open the bridge from the remote location.

The Interim Rule allows for mariners to continue their transit while the bridge is remotely operated and to comment as to whether the proposed method of operation is sufficient to insure the safety of vessels transiting the area.

This interim rule allows the bridge to be unmanned and operated remotely at all times. To facilitate the continued smooth operation of the bridge, mariners should exchange opening requests using the following method:

1. When a vessel with AIS equipment onboard approaches the two-mile post, the dispatcher will receive a prompt to open the bridge, if required, because a vessel is approaching. The vessel may continue to transit the waterway, but must tune their radiotelephone to VHF-FM channel 13 and receive passing instructions from the railroad dispatcher. The dispatcher must contact the vessel promptly to provide passing instructions to ensure the continued safe transit of the vessel. Operators of vessels without AIS equipment or operators of vessels with AIS who prefer to contact the railroad dispatcher via telephone may call the railroad dispatcher at 800-262-4691 to receive instructions and arrange passing.

2. When any vessel approaches the one mile post, the railroad dispatcher should have either cleared the vessel through the bridge or given an indication that a train is in the block and the vessel will be cleared as soon as practicable. If the vessel operator has not yet communicated with the railroad dispatcher, the vessel operator should immediately call the railroad dispatcher via telephone at 800-262-4691.

3. If any vessel reaches the one-half mile post and has not communicated with the railroad dispatcher nor been cleared to proceed, the vessel should stop and contact either the railroad dispatcher at 800-262-4691 or the Port of Victoria emergency contact at 361-570-8855.

Traffic on this waterway is primarily commercial and consists of vessels and tows that provide services to the Port of Victoria.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an

assessment of potential costs and benefits under section 6(a) (3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule allows all vessels utilizing this stretch of the waterway to continue to transit the waterway unencumbered while provide for the bridge owner to operate the bridge from a remote location. Vessel operators should not see any changes in the efficiency of vessel movements as the bridge will still be required to open on signal for the passage of vessels.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the property owners, vessel operators and waterway users who wish to transit on Victoria Barge Canal

daily. This rule will not have a significant impact on a substantial number of small entities for the following reasons: a test deviation was conducted and no opposition in response to the test was received by the Coast Guard Office of Bridge Administration. Further, through pre-coordination and consultation with property owners, vessel operators and waterway users, this operating schedule will accommodate all waterway users with minimal impact to their transits on the waterway.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast

Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their

discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12.Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13.Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14.Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for

drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Add § 117.991 to read as follows:

§117.991 Victoria Barge Canal

The draw of the Victoria Barge Canal Railroad Bridge across Victoria Barge Canal, mile 29.4, at the Bloomington, Victoria County, Texas, shall operate as follows:

(a) The draw shall be unmanned and when a vessel with AIS equipment onboard approaches the two-mile post, the dispatcher will receive a prompt to open the bridge, if required, because a vessel is approaching. The vessel may continue to transit the waterway, but must tune their radiotelephone to VHF-FM channel

13 and receive passing instructions from the railroad dispatcher. The dispatcher must contact the vessel promptly to provide passing instruction to insure the continued safe transit of the vessel. Vessels without AIS equipment or vessels with AIS who would prefer to call via telephone, may call the railroad dispatcher at 800-262-4691 to arrange passing instructions.

(b) When any vessel approaches the one-mile post, the railroad dispatcher should have either cleared the vessel through the bridge or given an indication that a train is in the block and the vessel will be cleared as soon as practicable. If the vessel has not yet spoken with the railroad dispatcher, the vessel should immediately call the railroad dispatcher via telephone at 800-262-4691.

(c) If any vessel reaches the one-half mile post and has not communicated with the railroad dispatcher nor been cleared to proceed, the vessel should stop and contact either the railroad dispatcher at 800-262-4691 or the Port of Victoria emergency contact at 361-570-8855.

Dated: June 17, 2015

DAVID R. CALLAHAN

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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